



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *Red*
DATE: May 14, 1997
SUBJECT: MUR 3774 - General Counsel's Report

The attached is submitted as an Agenda document
for the Commission Meeting of May 20, 1997

Open Session

Closed Session XX

CIRCULATIONS

72 Hour Tally Vote ()
Sensitive ()
Non-Sensitive ()
24 Hour Tally Vote ()
Sensitive ()
Non-Sensitive ()
24 Hour No Objection ()
Sensitive ()
Non-Sensitive ()
Information ()
Sensitive ()
Non-Sensitive ()
Other (X)

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SENSITIVE -BLUE PAPER

BEFORE THE FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION COMMISSION
MAY 14 3 52 PM '97

In the Matter of)
)
National Republican Senatorial Committee)
and Stan Huckaby, as treasurer)
Coalitions for America, Inc.)
National Right to Life Committee/National Right)
to Life Committee Political Action Committee)
Minnesota Citizens Concerned for Life/Minnesota)
Citizens Concerned for Life Political Action)
Committee)

SENSITIVE

MUR 3774

MAY 20 1997

EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

I. BACKGROUND

This matter involves a total of \$847,000 in payments from the non-federal account of the National Republican Senatorial Committee ("NRSC") to a state committee and three non-profit organizations just prior to U.S. Senate elections in Georgia in 1992, in Texas in 1993 and in Minnesota and Pennsylvania in 1994. The three non-profit organizations are the National Right to Life Committee ("NRLC"), the American Defense Foundation ("ADF"), and Coalitions for America ("CFA"). This matter also involves the uses of these donations, including a second tier of payments made to other organizations.

On February 4, 1997, the Commission approved fifteen Subpoenas to Produce Documents/Orders to Submit Written Answers to be sent to respondents and witnesses in this matter. The Commission also approved twenty-three Subpoenas for Deposition. This report generally updates the Commission on the status of compliance with these Subpoenas/Orders, and specifically discusses (1) the subpoena enforcement suit to be filed against the National Right to Work Committee ("NRTWC"); (2) the need for

subpoena enforcement authority with regard to the NRLC and the National Right to Life Political Action Committee ("NRL PAC"); (3) the need for contingent subpoena authority with regard to Minnesota Citizens Concerned for Life ("MCCL") and Minnesota Citizens Concerned for Life Political Action Committee ("MCCL PAC"); and (4) a Motion to Dismiss filed by CFA.

In almost all instances, the responses to the most recent Subpoenas/Orders in this matter have been insufficient in some way, and one is contradictory on its face. This situation has necessitated numerous follow-ups through letters and phone calls.

The failure of respondents and witnesses to provide sufficient responses in a timely manner, particularly documents, has also impeded this Office's ability to proceed with some depositions. In order to take the most effective depositions of NRSC employees, and in light of the fact that the statute of limitations will shortly run with regard to 1992 activity, this Office planned to first take the depositions of non-NRSC respondents and witnesses, beginning with those involved exclusively in 1992 activity, namely CFA and NRTWC. This Office then intended to move on to depositions of ADF and NRLC personnel before proceeding with NRSC personnel. Both ADF and NRLC received non-federal funds from NRSC in 1992 as well as in other years. However, as discussed more fully below, counsel for CFA has refused to provide a mutually convenient date for CFA President Eric Licht's deposition and has in fact filed a Motion to Dismiss. This motion also indicates that CFA will challenge any subpoena for deposition issued to Mr. Licht. In addition, CFA has declined to adequately respond to the Commission's February, 1997 interrogatories.

NRTWC, which received two grants from CFA in 1992 immediately after CFA received NRSC's funds, has identified persons in its organization with knowledge of the CFA's grants. However, it has refused to answer the Commission's interrogatory and document request relating to its direct mailings and other activities referencing federal candidates and elections around the time of CFA's grants. This refusal has necessitated a suit for subpoena enforcement which the Commission approved on March 25, 1997.

Similarly, NRLC and NRL PAC have filed untimely and incomplete responses to the Subpoenas/Orders sent to these organizations, even after receiving extensions of time to respond. NRLC and NRL PAC have refused to produce calendars of key NRLC personnel. Such calendars may likely reflect meetings between or among key NRLC personnel, the NRSC, relevant candidates, common vendors and other respondents and witnesses. The failure to produce this critical information has further delayed scheduling depositions of NRLC employees. After discussions with counsel, this Office offered the NRLC and NRL PAC alternatives to the actual production of calendars. In response, NRLC and NRL PAC, which were involved in both 1992 and 1994 activity, have provided some information regarding meetings with NRSC representatives and with candidates. However, they still refuse to reveal dates of meetings with 1992 candidates and with other, relevant individuals such as officials of MCCL and MCCL PAC.

In a similar vein, respondents MCCL, and MCCL PAC, who share the same counsel as NRLC, filed responses more than a week after their extension due date. These responses have also required follow-up; a follow-up letter is being drafted in this regard.

Finally, the Southern Education Counsel ("SEC"), a telemarketing firm which, according to *Dirty Little Secrets*, made telephone calls possibly funded through the NRLC in connection with the 1994 Minnesota and Pennsylvania Senate elections, has filed an insufficient response to the Subpoena/Order sent to that organization. In its response the SEC mischaracterized the information sought as records regarding solicitations for candidates, rather than as telephone calls regarding candidate positions, and failed to identify persons at the SEC having knowledge of such telephone calls. In response to a follow-up letter, SEC recently acknowledged that it was hired as a subcontractor by other companies during the relevant period, but it has failed to identify those companies, thus necessitating additional follow-up or subpoena compliance.

Despite these delays, this Office has proceeded where possible. We have informally interviewed two former, lower-level employees of ADF and two such employees of the NRSC. Although the Commission authorized subpoena depositions for the two former NRSC employees interviewed, Liz Owen and Enoch Ebong, we do not at this time anticipate having need to depose them. We have also taken the deposition of former ADF employee Wes Anderson, brother of NRSC Coalitions Director Curt Anderson. Depositions of two former NRSC executive directors are scheduled for May 14 and May 19. Depositions of ADF employee John Isaf and of ADF/NRSC consultant John Grotta are currently scheduled for May 22 and May 30, respectively.

II. ANALYSIS

a. NRTWC

On March 25, 1997, the Commission denied NRTWC's Motion to Quash the February, 1997 Subpoena/Order served upon that organization, and authorized this Office to file a civil suit to compel compliance with that Subpoena/Order. Despite this action by the Commission, NRTWC has continued to refuse to respond to our interrogatory and document request relating to its direct mailings and other activities referencing federal candidates and elections in October-December, 1992. After several telephone discussions in which the litigation division was involved, this Office sent NRTWC a letter in an effort to address its concerns that the interrogatories and document requests were overbroad. This letter, dated April 23, 1997, specifically delineated the types of information and documents sought through the Subpoena/Order. (Attachment 1).¹ In its reply of April 28, 1997, NRTWC continues to refuse to produce the information. (Attachment 2). Consequently, this Office has transferred the appropriate files to litigation to facilitate the filing of a subpoena enforcement action as approved by the Commission.

b. NRLC and NRL PAC and MCCL and MCCL PAC

In their responses to the Commission's Subpoenas/Orders, NRLC and NRL PAC refused to produce copies of 1992 and 1994 calendars kept by five NRLC and/or NRL PAC officials. These officials had previously been identified by NRLC as having met or communicated with NRSC officials, as having knowledge of the receipt of NRSC payments, and/or as having knowledge of NRLC's subsequent GOTV activities. NRLC

¹ This letter also sought additional information omitted from NRTWC's responses to other interrogatories. NRTWC did provide this missing information on April 28, 1997.

also refused to produce bank statements for the account into which NRSC funds were deposited, even though they earlier had produced statements for two other accounts into which funds may have been transferred.

Following discussions with NRLC/NRL PAC counsel, this Office sought to accommodate respondents' concerns by offering two alternatives to producing calendars: (1) that respondents permit us to inspect but not copy the calendars, or (2) that they simply provide meeting dates. On May 1, 1997, these respondents provided some of the requested information, but they still refuse to provide information regarding meetings with 1992 candidates, with specific officials of MCCL, with a vendor used by NRSC, and with other Respondents. They did produce most of the bank statements requested.

This Office believes that it is important to enforce the Subpoenas/Orders sent to NRLC and NRC PAC to obtain information necessary for the completion of this investigation.² Therefore, this Office recommends that the Commission authorize the filing of a civil action in U.S. District Court to enforce the Subpoenas/Orders sent to NRLC and NRL PAC. In the meantime, we will proceed with NRLC depositions subject to recall of the witnesses at such time as the court rules on enforcement of the Subpoenas/Orders.

As noted earlier, MCCL and MCCL PAC's responses to the Subpoenas/Orders are also insufficient. This Office is drafting a follow-up letter. In light of the difficulty in obtaining information from NRLC and NRL PAC and because they are represented by the same counsel, this Office is not confident that MCCL and MCCL PAC will be any

² This is especially true in light of our attempts to accommodate their wishes.

more cooperative than other respondents in providing the requested information. To avoid further delay, this Office recommends that the Commission authorize the filing of a civil action in U.S. District Court to enforce the Subpoenas/Orders sent to MCCL and MCCL PAC should respondents fail to comply voluntarily.

c. CFA

On February 12, 1997, the Commission approved a second Subpoena to Produce Documents/Order to Submit Written Answers to be sent to CFA largely focused on its grants to NRTWC and LCV, another organization. A response to this Subpoena/Order was received on April 7, 1997. On April 17, 1997, counsel filed a Motion to Dismiss CFA as a respondent in this matter.³

CFA's April 7 response to the Commission's Subpoena/Order is insufficient and contradictory. In an earlier response, CFA acknowledged making grants to NRTWC and the League of Catholic Voters ("LCV") in 1992. Its response to the more recent Subpoena/Order does not adequately identify the LCV official with whom it communicated about the 1992 grant. This Office has thus far been unable to locate any individual connected with LCV. Information provided by the bank into which the LCV check was deposited revealed that LCV shared the same address as CFA in 1992, and that

³ On September 13, 1995, CFA responded to the Commission's first set of interrogatories and requests for documents. CFA submitted a corrected response on September 30, 1995. On February 2 and 23, 1996, this Office requested both clarification of several of the responses and responses to other interrogatories not yet answered. On February 27, 1996, counsel for CFA clarified some of the information provided earlier and provided some additional information.

LCV's bank account has been closed. Additional inquiries suggest the organization which received the grant is defunct.

CFA's most recent response also states that CFA did not make grants to organizations other than NRTWC and LCV; however, CFA's 1992 Form 990 tax return lists grants to two other organizations. Counsel conceded during a follow-up telephone call that the response to the Subpoena/Order appeared to be erroneous and agreed to provide an address for the LCV official as well as appropriate information regarding other grants. During the same phone conversation, this Office also sought a mutually convenient deposition date for Eric Licht. Counsel objected to this Office's taking of Mr. Licht's deposition, but agreed to speak to his client. Shortly thereafter, counsel advised that Mr. Licht would not agree to a deposition date, and indicated he was going to immediately file a Motion to Dismiss. Counsel has also further refused to provide the corrected and missing information he previously agreed to supply.

In his Motion to Dismiss, counsel states that the grants made by CFA to LCV in 1992 "related to a New England referendum, having no connection with Georgia, or any other, federal election." (Attachment 3, page 4). Counsel terms the grants made by CFA to NRTWC "nonspecific" and "for general fungibility." (Attachment 3, pages 4 and 6). Finally, he states: "CFA has participated in no campaign, directly or indirectly." (Attachment 3, page 6). On this basis, counsel argues that the Commission should have dismissed CFA "at the threshold" and now should do so.

Although CFA has consistently but generally denied that the 1992 checks from NRSC and its grants to other entities were received and made for purposes of influencing

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federal elections, it has never provided a full explanation of the circumstances surrounding these two categories of funds and the purpose behind either. CFA has only generally stated that NRSC checks received in October and November, 1992, were "fungible." Similarly, CFA has provided only the most minimal explanation as to the purpose of its October and November, 1992 grants to LCV and NRTWC. The appropriate avenue for obtaining this information will be through the deposition of Mr. Licht.

Given, at the least, the proximity in time of CFA's grants to NRTWC to the 1992 general election and the November 24, 1992 run-off election in Georgia, and given the known involvements of the NRTWC in GOTV efforts in Georgia and of the Right To Work Political Action Committee ("RTW PAC") as a donor to the Coverdell campaign,⁴ this Office believes it would be premature to dismiss CFA from involvement in the present enforcement matter. Accordingly, this Office recommends the Commission deny CFA's Motion to Dismiss.

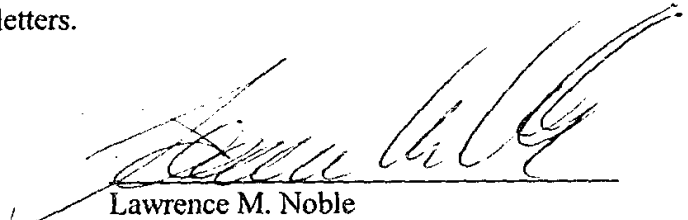
In addition, this Office now intends to issue the Commission's Subpoena for Deposition to Mr. Licht, with that deposition to be scheduled for June 5, 1997. Given the previous statements by CFA's counsel, this Office does not expect that Mr. Licht, an essential witness in this matter, will comply with the Commission's Subpoena. Accordingly, this Office recommends that the Commission authorize this Office to file a civil suit against Eric Licht seeking enforcement of the Commission's Subpoena for Deposition should he fail to comply.

⁴ Although RTW PAC is registered as a non-connected political committee, its treasurer, Reed E. Larson, is the president of NRTWC.

III. RECOMMENDATIONS

1. Authorize the Office of General Counsel to file a civil action to enforce the Subpoenas for Documents and Orders to Submit Written Answers issued to the National Right to Life Committee and to the National Right to Life Political Action Committee.
2. Authorize the Office of General Counsel to file a civil action to enforce the Subpoenas for Documents and Orders to Submit Written Answers issued to the Minnesota Citizens Concerned for Life and to the Minnesota Citizens Concerned for Life Political Action Committee should respondents fail to comply voluntarily.
3. Authorize the Office of General Counsel to file a civil suit against Eric Licht seeking enforcement of the Commission's Subpoena for Deposition should he fail to comply.
4. Deny the Motion to Dismiss filed by the Coalitions for America, Inc.
5. Approve the appropriate letters.

5/14/97
 Date


 Lawrence M. Noble
 General Counsel

Attachment

NRTWC letter dated 4/23/97
 NRTWC letter dated 4/28/97
 CFA's Motion to Dismiss

Staff Assigned: Dawn Odrowski and Anne Weissenborn